THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 29045 OF 1997

Dated 21st February, 2007

Between:

T.Rama Subba Reddy

…Petitioner

And

A.P. Cooperative Union Limited,
Represented by its Managing Director,
Gunfoundry, Hyderabad and others.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioner has challenged the order of the Cooperative Tribunal, Hyderabad dated 16.8.1997 passed in C.T.A.No.188 of 1995.

The petitioner was an employee of the first respondent – A.P. Cooperative Union Limited, a society registered under the A.P. Cooperative Societies Act. After putting about 28 years of service, the petitioner retired from service on 31.7.1994. At the time of retirement, he was drawing a salary of Rs.7860/- plus D.A. of Rs.536/-. On attaining the age of superannuation, he was paid an amount of Rs.1,17,544/- towards gratuity as per the bye-laws of the society, particularly, bye-law No.65. But, however, noticing that there is a ceiling of Rs.1.00 lakh on the amount of gratuity payable to an employee under sub-section 4(3) of Payment of Gratuity Act, 1972, (for short "the Act"), a dispute was raised to recover an amount of Rs. 17,544/-. The said dispute was referred to an arbitrator in ARC No.5 of 1995. The Joint Registrar/Arbitrator, by his Award dated 30.10.1995 dismissed the arbitration claim raised by the first respondent-society. The arbitrator construed byelaw No.65 as the agreement within the meaning of sub-section (5) of Section 4 of the Payment of Gratuity Act and by recording a finding that there was no restriction of upper ceiling of Rs.1.00 lakh, dismissed the arbitration claim raised by the respondent-society. However, on appeal filed by the first respondent-society, the appellate authority has recorded a finding that bye-law No.65 of the bye-laws of the society cannot be construed as a contract contrary to ceiling prescribed under sub-section (3) of Section 4 of the Act, and

allowed the appeal of the first respondent-society.

In this writ petition, it is submitted by Shri S.Ravindranath, learned counsel for the petitioner that though there is an upper ceiling of Rs.1.00 lakhs under sub-section (3) of Section 4 of the Act, but in sub-section (5) of Section 4 of the Act, it is open for the employee to enter into an agreement with the employer with better terms of gratuity. Learned counsel submits that as much as bye-law 65 merely says that the gratuity payable is equivalent to 15 days salary for every completed year of service, the ceiling of Rs.1.00 lakh prescribed in sub-section (3) of Section 4 of the Act does not apply.

Sub-sections (3) and (5) of Section 4 of the Payment of Gratuity Act, 1972 read as follows:

> "4. Payment of gratuity:- (1) xxxx xxxx xxxxx
>
> (2) xxxx xxxx xxxx xxx
>
> (3) The amount of gratuity payable to an employee shall not exceed one lakh rupees;
>
> (4) xxxx xxxx xxxx xxx
>
> (5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

In this case, the petitioner relies on bye-law No.65 of the society, which provides for payment of gratuity at the rate of half-a-month's salary or 15 days average wages for completed year of service calculated on the salary during the last 30 days immediately preceding his leaving the service. It is not in dispute that he was a regular employee of the society. What is contemplated under sub-section (5) of Section 4 of the Act is a specific contract between the employer and the employee for receipt of the gratuity payable on and above the ceiling limit as prescribed in sub-section (3) of Section 4 of the Act. In this case, the byelaw relied on by the petitioner cannot be construed as an agreement within the meaning of sub-section (5) of Section 4 of the Payment of Gratuity Act.

Byelaw No.65 of the society cannot be construed either as award, agreement or contract within the meaning of sub-section (5) of Section 4 of the Payment of Gratuity Act, 1972. In any event, there is also no specific agreement in supersession of the ceiling limit of gratuity as prescribed under sub-section (3) of Section 4 of the Act. In that view of the matter, it is not open for the petitioner to plead that the ceiling as contemplated under the Act will not apply to him.

No other ground has been urged.

Having regard to the facts of the case, the appellate authority has considered the scope of the provisions in proper perspective and I do not find any valid ground, which warrants interference with the order impugned herein in this petition under Article 226 of the Constitution of India. The writ petition is devoid of merits and is accordingly dismissed. No costs.

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21.2.2007

R.SUBHASH REDDY, J.

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